

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

PETERSON LAND & DEVELOPMENT, INC. and PAUL PETERSON,

Respondents.

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DOCKET NO. 07-3440-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices dated July 10, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondents PAUL PETERSON and PETERSON LAND & DEVELOPMENT, INC. that HUD was proposing their debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of the final determination of the proposed action. Respondents also were advised in the July 10, 2007, Notices that their proposed debarment was in accordance with the procedures set forth in 24 CFR part 24.¹ In addition, the Notice informed Respondent Peterson that his proposed debarment was based upon his conviction in the United States District Court for the Central District of California for violation of federal criminal statutes. The July 10, 2007, Notice to Respondent PETERSON LAND & DEVELOPMENT, INC. (PLD) informed the company that its proposed debarment was based on information that it was an affiliate of Respondent Paul Peterson.²

¹ Subsequent to the issuance of the Notices in this matter, HUD published a final rule (72 FR 73484, December 27, 2007), which relocated and recodified its debarment regulations from 24 CFR part 24 to 2 CFR 2424 pursuant to the government-wide regulation published by OMB and codified at 2 CFR part 180. (See 70 FR 51863, August 31, 2005). The recodified regulations are substantively unchanged from the predecessor regulations formerly found at 24 CFR part 24. For the convenience of the reader, citations to the debarment regulations in this Determination will be to 2 CFR part 180.

² The record in this matter indicates that Respondent Paul Peterson was notified of his proposed debarment by notice dated July 10, 2007. Respondent Paul Peterson failed to respond to the July 10, 2007, Notice within the required thirty-day deadline. Consequently, Respondent Paul Peterson's debarment became final in accordance with 24 CFR 24.810. In a letter to the Debarring Official Designee dated December 20, 2007, Respondent's attorney protested that his August 8, 2007, letter requesting a hearing, notwithstanding its apparent ambiguities, was intended to apply to both Respondents, not only to Peterson Land & Development, Inc. Subsequently, in a letter dated January, 9, 2008, in my capacity as the acting Director of the Departmental Enforcement Center, the official responsible for proposing Respondents' debarment, I

Respondent Peterson's conviction followed a jury trial in which he was found guilty on both counts of a second superseding indictment. The indictment charged Respondent Peterson and his co-defendant³ with conspiracy and with making and using false writings and documents, knowing them to contain materially false, fictitious and fraudulent statements and entries in violation of 18 U.S.C. 371, 1001(a)(3) and 2. In summary and in pertinent part, the indictment alleges that Respondent Peterson and his coconspirators conspired to sell properties developed by Peterson Land & Development, Inc. to unqualified buyers. As part of the conspiracy, the conspirators would obtain gift letters on behalf of these buyers, which, as they well knew, falsely stated that the promised funds would come from acceptable donors. The gift letters along with other required documentation were submitted to various lending institutions. As a consequence, these lending institutions made mortgage loans that were insured by FHA. Some of these unqualified buyers failed to make their mortgage payments and the loans went into default, resulting in a financial loss to HUD.

For Respondent Peterson's conviction on the two counts in the indictment, he was sentenced to an eighteen-month term of imprisonment and placed on probation for three years. Additionally, Respondent was ordered by the court to pay within ninety days of the judgment restitution of \$1,258,775.00 along with a fine of \$50,000.00.

A telephonic hearing on Respondents' proposed debarment was held in Washington, D.C. on May 6, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent Peterson was not present at the hearing, but was represented by his attorney, Harland W. Braun, Esq., who also appeared on behalf of Respondent Peterson Land & Development, Inc.; Michael J. Milner, Esq. appeared on behalf of HUD as Government counsel.

SUMMARY

I have decided, pursuant to 2 CFR part 180, to debar Respondents from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for an indefinite period from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The respective Notices of Proposed Debarment dated July 10, 2007.
- (2) The second superseding indictment filed against Respondent and his codefendant in the United States District Court for the Central District of California.
- (3) The Judgment and Probation/Commitment Order entered against Respondent Peterson on March 13, 2007.

notified Respondents' counsel that "[a]fter reviewing [his] letter of December 20, 2007, I have decided to grant Mr. Peterson's a hearing on his debarment. Accordingly, the Notice of Final Determination is withdrawn."

³ Respondent's co-defendant in the criminal case is not a party to this proceeding.

- (4) A letter dated August 8, 2007, from Respondents' counsel addressed to the Acting Director of the Departmental Enforcement Center.
- (5) The Government's Brief in Support of an Indefinite Debarment filed April 11, 2008 (including all attachments and exhibits thereto).
- (6) Respondent's Brief Requesting a Delay and Opposing a Possible Debarment filed April 29, 2008 (including all exhibits thereto).
- (7) The digital recording of the May 6, 2008, hearing.

GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel argues that Respondent Peterson, as a seller of properties that were covered by FHA-insured mortgages, was a participant in a primary covered transaction. Thus, Respondent Peterson is subject to the debarment regulations at 2 CFR part 180. Government counsel argues that Peterson's conviction for conspiracy and for making false statements provides cause for debarment under 2 CFR 180.800(a)(3). Additionally, Peterson's making of false statements is an offense that indicates a lack of business integrity or business honesty that directly affects his present responsibility, thereby providing further cause for his debarment pursuant to 2 CFR 180.800(a)(4). Government counsel also argues that, because Peterson's conviction was for a criminal offense involving FHA-insured loans, this provides a further basis for his debarment under 2 CFR 180.800(a)(1).

Government counsel next argues that Peterson's lack of present responsibility and the absence of mitigating factors support an indefinite debarment. Government counsel supports his position by describing the seriousness of Peterson's crime. Specifically, Government counsel contends that the scheme in which Peterson participated was intended to circumvent HUD's eligibility requirements. Peterson purchased checks using PLD's funds for the required downpayment for purchasers of his homes, which he represented as gifts from relatives of the purchasers. It was Peterson's aim, Government counsel argues, to deceive lenders and HUD into making and endorsing for insurance the loans made to these purchasers. Peterson compounded his deceit by falsely certifying that he did not provide any part of the downpayment.⁴ Peterson's actions, Government counsel contends, violated HUD's regulations and other legal authorities that require a minimum investment by the buyer from enumerated sources that HUD deems acceptable.⁵

Peterson's indefinite debarment, Government counsel argues, for his actions here would be consistent with the indefinite debarment imposed on other Respondents whose conduct was similarly egregious.⁶

Government counsel also argues that there are aggravating factors, as set forth in 2 CFR 180.860, that the Debarring Official may consider in imposing the appropriate

⁴ See CERTIFICATION OF SELLER IN AN FHA-INSURED LOAN TRANSACTION in form attached to Mortgagee Letter 91-9, dated February 11, 1991.

⁵ See HUD Handbook 4155.1 REV.-4, CHG-1

⁶ See Gov't Brief at 10.

period of debarment. In this regard, Government counsel argues that Peterson's wrongdoing, which occurred over a six-year period and involved at least eight FHA-insured mortgages, compromised the integrity of the FHA program and caused a substantial loss to the Government. Further, Peterson, the president of PLD, has not accepted responsibility nor shown remorse for his conduct, attempting to "trivialize it by equating the acts of the conspiracy to HUD-sanctioned down payment programs." Government counsel also adds that there is no evidence that Peterson brought his offenses to the attention of any government agency or cooperated with the Government during the investigation, and he has not paid the court-ordered restitution⁷. Accordingly, Government counsel concludes that, based upon Respondent Peterson's dishonesty and lack of present responsibility and considering the aggravating factors set forth here, "the public interest warrants a debarment for an indefinite period, irrespective of payment of restitution for the wrongdoing."

With respect to Peterson's co-respondent, Peterson Land & Development, Inc., Government counsel argues that it is an affiliate of Peterson's because, as PLD's president, Peterson had the power to control it. Further, Peterson's criminal conduct benefited PLD. PLD was able to sell its properties to persons whose loans were fraudulently obtained through Peterson's conspiracy. Government counsel states that, pursuant to 2 CFR 180.625(b), as an "affiliate, PLD can be properly debarred for a period of time concurrently with Peterson."

RESPONDENT'S ARGUMENTS

Respondent Peterson admits that he provided the down payments to homebuyers. Respondent further admits that he did certify on the HUD-1 form that he was not the source of the downpayments. Respondent argues that his actions here are indistinguishable from "HUD-approved HART [Housing Action Resource Trust] transactions" in which HUD accepts the HUD-1 certificate although HUD knows that the builder is the source of the down payment. In this proceeding, Respondent reaffirmed the position he adopted in his criminal trial that his false certificate though a "technically incorrect statement was not economically material to the government." Respondent justifies his position on the basis that the homebuyers on whose behalf the downpayments were made had no duty or obligation to repay these funds. Respondents also argue that the recipients of the disputed downpayments were "otherwise qualified first time home buyers." Respondents further assert that there is no evidence that they raised the prices of the homes they sold to cover the donated downpayments.

Respondents challenge Government counsel's contention that their conduct compromised the integrity of the FHA program. As Respondents see it, there was "no increased risk in the loans because the homebuyers were otherwise qualified." Thus, any losses suffered as a result of defaults by these homebuyers on their FHA-insured loans were "attributable to extraneous causes." Respondents argue that their alleged

⁷ HUD notes that, according to Respondent's counsel, "the entire amount of the restitution is being held 'in trust' by the District Court." See also, Resp. Brief at 3, stating that the full "amount of restitution has been placed in trust by the court."

wrongdoing “occurred in the last century [and] [t]here is no allegation of any such improper gifts during the current century.” Respondents also argue in mitigation of their conduct that Respondent Peterson has paid the court fine and special assessment and deposited the full amount of restitution in trust. Respondent Peterson also states that as president of PLD, he accepts full responsibility for the conduct at issue here.

Respondents conclude that because “there is no economic difference between the down payment coming direct from Respondent and the down payment going through a ‘straw’ charity to a home buyer, [t]his case clearly presents the issue of materiality in its starkest form . . . [and] any debarment should be stayed until the issue of materiality is decided by the Ninth Circuit” to whom the criminal conviction has been appealed.

FINDINGS OF FACT

1. Respondent Peterson was president of PLD, a for-profit company and an FHA-approved builder that built and sold homes.
2. Respondents provided downpayment assistance to prospective homebuyers to enable them to meet the minimum cash investment required for HUD to insure the mortgage loan on their home.
3. Pursuant to HUD directives governing the FHA insurance program, it is unacceptable for certain entities having an interest in the sale of a property, such as the seller or builder, to donate downpayment funds to the buyer.⁸
4. The addendum to the HUD-1 required Respondent to certify that he had not provided any part of the downpayment.
5. Respondent Peterson so certified, notwithstanding that he had donated downpayment funds to the buyers.
6. Respondent admits that he gave gifts of funds to buyers to enable them to purchase homes from him.
7. At least eight of the FHA-insured loans with respect to which Respondents donated the downpayment went into default, resulting in financial losses to HUD.
8. Respondent was convicted in a jury trial of the criminal offenses of conspiracy, making false statements, and aiding and abetting and causing an act to be done.
9. Respondent was sentenced to an eighteen-month term of imprisonment and placed on supervised release for three years and ordered to pay restitution of \$1,258,775.00.
10. Respondent accepts responsibility for the conduct described in this matter.

CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent Peterson was a participant in a covered transaction as defined in 2 CFR part 180.

⁸ See, e.g., HUD Handbook 4155-1 REV-4, CHG1, 2-10.

2. PLD was an affiliate of Respondent Peterson's because, as president of PLD, Peterson had "the power to control" PLD. See 2 CFR 180.905. PLD as an affiliate also is subject to this debarment action pursuant to 2 CFR 180.625(b).
3. Respondent admitted at his criminal trial that he had provided downpayment funds to homebuyers. Respondent's certifying the HUD-1 Addendum that he did not was false⁹.
4. Respondent's criminal conviction serves as the basis for his debarment.
5. Pursuant to 2 CFR 180.800(a)(3), a conviction for making false statements, *inter alia*, is a cause for debarment.
6. Based upon Respondent Peterson's conviction, HUD has met its burden of proof with respect to his debarment in accordance with 2 CFR 180.800 (b).
7. It is well settled that a debarment proceeding is not the appropriate forum for a collateral attack on a criminal conviction and an appeal of a conviction does not prevent the imposition of a debarment. See, e.g., *In the Matter of Frank Moscato and City Construction Development, Inc.*, HUDBCA NO. 94-A-127-D6, 1994 HUDBCA Lexis 8 (August 1, 1994).
8. HUD's debarment regulations make no provision for a stay of the debarment proceedings pending disposition of Respondent's appeal of his criminal conviction.
9. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
10. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
11. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through 2 CFR 180.870(b)(2)(iv), to debar Respondents for an indefinite period from the date of this Determination. Respondents' "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 19 June 2008



Henry S. Czauski
Debarring Official

⁹ See fn. 4 and 5 *supra*. See also, the Addendum to the HUD-I, which states, in pertinent part, "It is a crime to knowingly make false statements to the United States on this or any other similar form."